

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

HERBERT D. REESE,)	
Plaintiff,)	
)	C.A. No. 21-304 Erie
)	
v.)	District Judge Susan Paradise Baxter
)	Magistrate Judge Richard A. Lanzillo
MATTHEW C. PARSONS, et al.,)	
Defendants.)	

MEMORANDUM ORDER

Plaintiff Herbert D. Reese, an inmate incarcerated at the State Correctional Facility at Camp Hill, Pennsylvania, initiated this action on November 3, 2021, by filing a *pro se* civil rights complaint [ECF No. 1-1], accompanied by a motion to proceed *in forma pauperis* (“ifp motion”) [ECF No. 1]. Named as Defendants are Matthew C. Parson,¹ Plaintiff’s court-appointed attorney for his post-conviction relief petition (“Parson”), and Robert Boyer, a retired judge of the Court of Common Pleas of Venango County, Pennsylvania (“Boyer”). Plaintiff alleges that Defendant Parson provided ineffective assistance of counsel by failing to file an amended PCRA petition, and that Defendant Boyer violated his constitutional rights by failing to advise him that no amended PCRA petition had been filed and that his PCRA petition had been dismissed, and by engaging in a conflict of interest because he had previously revoked Plaintiff’s probation in the underlying proceeding. This matter was referred to United States Magistrate Judge Richard A. Lanzillo for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. §636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

¹
Incorrectly spelled “Parsons” in Plaintiff’s complaint.

On March 2, 2022, Judge Lanzillo issued a report and recommendation (“R&R”) recommending that Plaintiff’s ifp motion be granted and that this action be dismissed as legally frivolous in accordance with 28 U.S.C. § 1915(e), for failure to state a claim upon which relief may be granted [ECF No. 5]. In particular, Judge Lanzillo found that Plaintiff’s claims against Defendant Parson should be dismissed because he is not a “state actor” subject to suit under 42 U.S.C. § 1983, and that Plaintiff’s claims against Defendant Boyer are barred by both Eleventh Amendment immunity and absolute judicial immunity. No timely objections to the R&R have been filed by Plaintiff.

After de novo review of the complaint, together with the report and recommendation, the following order is entered:

AND NOW, this 25th day of April, 2022;

IT IS HEREBY ORDERED that the report and recommendation of Magistrate Judge Lanzillo, issued March 2, 2022 [ECF No. 5], is adopted as the opinion of the Court, and this action is DISMISSED as frivolous pursuant to 28 U.S.C. § 1915(e), based on Plaintiff’s failure to state a claim upon which relief may be granted. Since the defects identified by the Magistrate Judge cannot be corrected by amendment, such dismissal is with prejudice. The Clerk is directed to mark this case “CLOSED.”



SUSAN PARADISE BAXTER
United States District Judge

cc: The Honorable Richard A. Lanzillo
U.S. Magistrate Judge

all parties of record